IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1083 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RANCHHODBHAI MAGANBHAI PATEL

Appearance:

1. Special Civil Application No. 1083 of 1992
MR HARDIK C RAWAL for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

#. Heard Mr.Hardik C. Rawal, learned advocate appearing on behalf of the petitioner - Corporation. Though notice of Rule has been served on the respondent but the respondent has not remained present and not engaged any advocate on his behalf. Therefore, this matter being old

one, is taken up for hearing even in absence of the respondent.

#. In the present petition, the petitioner - Corporation has challenged the award passed by the Labour Court, Ahmedabad in Reference No.1398 / 1987 dated 6th April, 1991, wherein the labour court has set aside dismissal order dated 10th October, 1984 and granted reinstatement with continuity of service and also granted full backwages for interim period as also other consequential benefits in favour of the respondent workman. The petitioner has produced deposition of the respondent workman made before the Departmental Authority. However, at the time of issuing RULE, Division Bench of this Court [Coram : A.P.Ravani and C.K.Thakkar, JJ] has passed the following order :-

"Rule. By way of interim relief it is directed that the petitioner - Corporation will pay 40 [forty] per cent of the amount of backwages to the respondent-workman and may withhold the amount of 60 per cent of backwages on the conditions that in case the petitioner fails in the petition, the petitioner will pay the withheld amount of backwages of whatever amount which may be directed to be paid to the respondent - workman with 12 per cent interest. The amount of 40 % of the backwages will be paid to the workman latest by March 31, 1992. In case the amount is not paid by March 31, 1992, it shall carry interest at the rate of 12 percent till the date of payment."

#. It is pertinent to note that this Court has not granted stay against reinstatement. As per the direction issued by the Divisions Bench of this Court, 40 % amount of the backwages was deposited by the petitioner Corporation before the Labour Court and whether said amount has been withdrawn by the workman or not, is not mace clear before this Court. Mr.Rawal, learned advocate has submitted that as per casual contract, bus wherein passengers 60 in numbers were allowed but as per the charge levelled against the respondent workman, he allowed eight more passengers in the said bus at the time when the bus was checked. However, it is submitted that no fare was collected or no amount has been recovered from said eight passengers by the respondent workman. However, the respondent workman who was working as driver had unauthorisedly allowed said eight passengers contrary to the contract. On the basis of said misconduct committed by the respondent workman, chargesheet was

served after giving reasonable opportunity. Thereafter, departmental inquiry was completed and ultimately, the respondent came to be dismissed from service on 10th October, 1984. Mr.Rawal, learned advocate for petitioner has also submitted that the labour court has not appreciated the evidence led in the departmental inquiry and granted reinstatement with continuity of service though misconduct was proved in departmental inquiry. He also submitted that granting of backwages of interim period, amounts to extra burden on the public body. It is also submitted that the respondent workman was working as the driver and therefore, presumption is drawn that he must have worked somewhere and by doing some miscellaneous work must have earned something to run the livelihood of the family. Therefore, full backwages of the interim period ought not to have been granted by the labour court and therefore, the error committed by the labour court required to be interfered with by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. I have considered submissions made by the learned advcoate Mr.Rawal on behalf of the petitioner and also perused the entire award passed by the labour court. The Reference was made on 18th July, 1987, statement of claim was filed by the respondent workman vide Exh.4 and written statement was submitted by the Corporation vide Exh.6. Thereafter, the labour Court has framed the issues whether the respondent workman is entitled to reinstatement and other relief or not ? The labour court in para-5 of the award has discussed the evidence and considering the finding given by the competent authority that at the time when the bus was checked, there were 68 passengers found though the contract was for 60 passengers only. It has also come on record that the fare was recovered by the checking party and was given to the driver to deposit the same in the depot. The labour court has considered the statement given on the spot which was annexed by the petitioner in the present petition at Annexure-A pg.6. In said statement also the respondent workman has give same reply that at the time when the bus was checked, prior to that, Metardoor of the party concerned was break down and eight passengers including the bridegroom were travelling in the Metardoor and therefore conceding the request of the party, said eight passengers were allowed to board in the bus. However, it has also come on record that the respondent workman had informed the party concerned to pay the fare of said eight passengers to the corporation. This defence remained unaltered till final decision of dismissal and no defence has been changed by the

respondent workman. The labour court has considered one more aspect that according the agreement with the Corporation and Union which is at pg.17, conductor requires to be sent by the Corporation. In the incident in question, no conductor was provided with the bus. Therefore, it was not the duty of the driver to calculate the passengers and to give account of such passengers to the Corporation. The labour court has also observed that it was failed to understand as to why the driver was made responsible for the said incident. The labour court has also observed that no amount has been recovered by the respondent workman from the party and the respondent workman had no such intention to recover the fare, otherwise, he would have recovered the fare from said eight passengers but no fare was collected and therefore, on the contrary, checking staff had recovered the fare and given to the respondent workman to deposit the said amount before the depot. Therefore, the labour court has observed that in such situation, punishment of dismissal is totally unwarranted and arbitrary and harsh as well as unjustified. On the contrary, it has been observed by the labour court that some departmental action requires to be initiated against the officer who has passed dismissal order and further observed that this is not at all case of dishonesty and misappropriation but since the Metardoor was break down, this incident in question had occurred and said eight passengers who were related to the party who had executed casual contract, were allowed to sit in the said bus under intimation to the party to pay fare for said eight passengers before the Depot. Thus, after considering the entire evidence which was on record before the labour court, has passed the order setting aside the dismissal order dated 10th October, 1984 and granted reinstatement with continuity of service and full backwages of interim period.

#. I have perused entire award and the evidence which was led in departmental inquiry. It reveals the fact that the workman at the time of incident, had put in three to four years of service and no past record was produced before the labour court and as such, there was no allegation made by the petitioner Corporation against the respondent workman that his past record was bad. Even in the departmental inquiry, the respondent workman has given same explanation which was tendered at the spot when the bus was checked and therefore considering all these aspects and the fact that on the date of incident, Metardoor of party concerned got break down and the eight passengers who were related to the party were allowed to sit in the bus. Ultimately, the bus was checked at that time, unauthorised eight passengers were allowed in bus.

In departmental inquiry, the respondent workman had pointed out that the conductor was not provided and therefore, there was no intention on the part the respondent workman to collect fare from said eight passengers but they were allowed to sit exceeds the numbers of the casual contract. Considering all these aspects of the matter, the labour court given cogent reasons in support of its conclusion and as such, there is no error committed by the labour court while passing such award while granting reinstatement with continuity of service. Looking to the facts and circumstances of the case, the labour court has not committed any error and there is no jurisdictional error which requires any interference of this Court. However, considering the fact that grant of full backwages with all consequential benefits to the respondent workman requires to be examined by this Court in view of the fact that the petitioner is public body need not be burdened with extra financial loss. It is also pertinent to note that the respondent workman was dismissed from service on 10th October, 1984 and dispute was referred for adjudication on 18th July, 1987 and the matter remained pending before the labour court for about 4 years. One more aspect which has also been taken into consideration by the Labour Court that the respondent workman is driver and therefore some presumption can be drawn that during the interim period, he must have done some miscellaneous work and earned something thereby. Therefore, considering all these facts and circumstances of the case, according to my opinion, if relief granted by the labour court awarding full backwages of the interim period is reduced by 25 % and the workman is awarded 75 % backwages for interim period instead of full backwages, will meet the ends of justice.

#. In view of above discussion, present petition is partly allowed. The award passed by the labour court, Ahmedabad in Reference No.1398 / 1987 date 6th April, 1991 is modified to the effect that full backwages of the interim period to the respondent workman is reduced by 25% and now the workman is entitled to 75 % backwages of the interim period. Rest of the directions issued in the award of the labour court as regards reinstatement and continuity of service with all consequential benefits remain unaltered and same is not disturbed by this Court. It is also observed that this Court has modified the order of granting backwages, therefore, question of paying interest on the withheld amount as per the direction of this Court, does not arise now.

Rule is made absolute accordingly. No order as

to cost.

Date : 10-4-2002 [H.K.Rathod, J.]

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